

House Bill 725

By: Representatives Cantrell of the 22nd, Spencer of the 180th, Ballinger of the 23rd, Weldon of the 3rd, Evans of the 42nd, and others

A BILL TO BE ENTITLED
AN ACT

To amend Article 2 of Chapter 5 of Title 49 of the Official Code of Georgia Annotated, relating to child abuse and deprivation records, so as to provide for greater confidentiality of child abuse records; to provide for and revise definitions; to change provisions relating to persons and agencies permitted access to records of child abuse; to provide for contents of a protective order; to provide for immunity for child advocacy centers in releasing child abuse records under certain circumstances; to provide for a short title; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Child Abuse Records Protection Act."

SECTION 2.

Article 2 of Chapter 5 of Title 49 of the Official Code of Georgia Annotated, relating to child abuse and deprivation records, is amended by revising Code Section 49-5-40, relating to definitions for the article and confidentiality of records, as follows:

"49-5-40.

(a) As used in this article, the term:

(1) 'Abused' means subjected to child abuse.

(2) 'Child' means ~~any person~~ an individual under 18 years of age.

(3) 'Child abuse' means:

(A) Physical injury or death inflicted upon a child by a parent, guardian, legal custodian, or caretaker thereof by other than accidental means; provided, however, that physical forms of discipline may be used as long as there is no physical injury to the child;

(B) Neglect or exploitation of a child by a parent, guardian, legal custodian, or caretaker thereof;

- (C) Sexual abuse of a child; ~~or~~
 (D) Sexual exploitation of a child; or
 (E) Emotional abuse of a child.

However, no child who in good faith is being treated solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be ~~an 'abused' child~~ abused.

(4) 'Child advocacy center' means an entity which is operated for the purposes of investigating known or suspected child abuse and treating a child or a family that is the subject of a report of child abuse and which:

(A) Has been created and supported through one or more intracommunity compacts between such center and:

(i) One or more law enforcement agencies within this state; any other state; the United States including its territories, possessions, and dominions; or a foreign nation;

(ii) The office of the district attorney, Attorney General, or United States Attorney;

(iii) A legally mandated public or private child protective agency within this state; any other state; the United States including its territories, possessions, and dominions; or a foreign nation;

(iv) A mental health board within this state; any other state; the United States including its territories, possessions, and dominions; or a foreign nation; or

(v) A community health service board within this state; any other state; the United States including its territories, possessions, and dominions; or a foreign nation; and

(B) Has been certified by a multidisciplinary, multiagency committee established for a county pursuant to Code Section 19-15-2.

(5) 'Court' means a judge of any court of record or an administrative law judge of the Office of State Administrative Hearings.

(6) 'Emotional abuse' shall have the same meaning as set forth in Code Section 15-11-2.

(7) 'Legal custodian' shall have the same meaning as set forth in Code Section 15-11-2.

~~(4)~~(8) 'Near fatality' means an act that places a child in serious or critical condition as certified by a physician.

(9) 'Record' shall include documents, books, maps, drawings, computer based or generated information, data, data fields, photographs, video images, audio recordings, and video recordings.

~~(5)~~(10) 'Sexual abuse' means a person's an individual's employing, using, persuading, inducing, enticing, or coercing any minor child who is not that person's individual's spouse to engage in any act which involves:

- (A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between ~~persons~~ individuals of the same or opposite sex;
- (B) Bestiality;
- (C) Masturbation;
- (D) Lewd exhibition of the genitals or pubic area of any ~~person~~ individual;
- (E) Flagellation or torture by or upon a ~~person~~ an individual who is nude;
- (F) Condition of being fettered, bound, or otherwise physically restrained on the part of a ~~person~~ an individual who is nude;
- (G) Physical contact in an act of apparent sexual stimulation or gratification with any ~~person's~~ individual's clothed or unclothed genitals, pubic area, or buttocks or with a female's clothed or unclothed breasts;
- (H) Defecation or urination for the purpose of sexual stimulation; or
- (I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

Such term ~~'Sexual abuse'~~ shall not include consensual sex acts ~~involving persons of the opposite sex when the sex acts are between minors~~ children or between a ~~minor~~ child and an adult who is not more than five years older than the ~~minor~~. ~~This provision~~ child and shall not be deemed or construed to repeal any law concerning the age or capacity to consent.

~~(6)~~(11) 'Sexual exploitation' means conduct by any ~~person~~ individual who allows, permits, encourages, or requires ~~that~~ any child to engage in:

(A) Trafficking of persons for labor or sexual servitude, in violation of Code Section 16-5-46;

~~(A)~~(B) Prostitution, ~~as defined in~~ violation of Code Section 16-6-9; or

(C) Obscene depiction of a minor, in violation of Code Section 16-11-40.1;

(D) Nude or sexually explicit electronic transmission, in violation of Code Section 16-11-90; or

~~(B)~~(E) Sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, ~~as defined in~~ violation of Code Section 16-12-100.

(b) Each and every record concerning reports of child abuse and child controlled substance or marijuana abuse which is in the custody of the department, ~~or other state or local agency,~~ or child advocacy center is declared to be confidential, and access thereto is prohibited except as provided in Code ~~Section~~ Sections 49-5-41 and ~~Code Section~~ 49-5-41.1.

(c) Each and every record concerning child abuse or neglect which is received by the department from the child abuse and neglect registry of any other state shall not be disclosed or used outside the department for any other purpose other than conducting background checks to be used in foster care and adoptive placements."

SECTION 3.

Said article is further amended in Code Section 49-5-41, relating to persons and agencies permitted access to records, by revising subsections (a) and (f) and by adding a new subsection to read as follows:

"(a) Notwithstanding Code Section 49-5-40, the following persons or agencies shall have reasonable access to such records concerning reports of child abuse:

(1) Any federal, state, or local governmental entity, tribal entity, or any agency of any such entity, that has a need for information contained in such ~~reports~~ records in order to carry out its legal responsibilities to protect children from child abuse and neglect;

~~(2) A court, by subpoena, upon its finding that access to such records may be necessary for determination of an issue before such court; provided, however, that the court shall examine such record in camera, unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then before it and the record is otherwise admissible under the rules of evidence;~~

~~(3)~~(2) A grand jury by subpoena upon its determination that access to such records is necessary in the conduct of its official business;

~~(4)~~(3) A prosecuting attorney in this state or any other state or political subdivision thereof, or for the United States, The district attorney of any judicial circuit in this state, a solicitor-general, or any assistant district attorney or assistant solicitor-general who may seek such access in connection with official duty;

~~(5)~~(4) Any adult who makes a report of suspected child abuse as required by Code Section 19-7-5, but such access shall include only notification regarding the child concerning whom the report was made, shall disclose only whether the investigation by the department or governmental child protective agency of the reported abuse is ongoing or completed and, if completed, whether child abuse was confirmed or unconfirmed, and shall only be disclosed if requested by the person making the report;

~~(5.1)(A) As used in this paragraph, the term:~~

~~(i) 'Entity' means a child welfare agency providing protective services as designated by the department, or in the absence of such agency, a law enforcement agency or prosecuting attorney.~~

~~(ii) 'School' shall have the same meaning as set forth in Code Section 19-7-5.~~

(5)(A) Any entity that receives from a school employee a report of suspected child abuse as required by Code Section 19-7-5.

(B) Within 24 hours of a school employee making a report of suspected child abuse pursuant to Code Section 19-7-5, the entity that received receiving such report, such entity shall acknowledge, in writing, the receipt of such report to the reporting individual. Within five days of completing the investigation of the suspected child

abuse, such entity shall disclose, in writing, to the school counselor for the school such child was attending at the time of the reported child abuse, ~~advising as to whether the~~ suspected child abuse was confirmed or unconfirmed. If a school does not have a school counselor, such disclosure shall be made to the principal;.

(C) As used in this paragraph, the term:

(i) 'Entity' means a child welfare agency providing protective services as designated by the department, or in the absence of such agency, a law enforcement agency or prosecuting attorney.

(ii) 'School' shall have the same meaning as set forth in Code Section 19-7-5;

(6) Any adult requesting information regarding investigations by the department or a governmental child protective agency regarding the findings or information about the case of child abuse or neglect involving a fatality or near fatality; provided, however, that the following may be redacted from such records:

(A) Any record of law enforcement or prosecution agencies in any pending investigation or prosecution of criminal activity contained within the child abuse, neglect, or dependency records;

(B) Medical and mental health records made confidential by other provisions of law;

(C) Privileged communications of an attorney;

(D) The identifying information of a person who reported suspected child abuse;

(E) Information that may cause mental or physical harm to the sibling or other child living in the household of the child being investigated;

(F) The name of a child who is the subject of reported child abuse or neglect;

(G) The name of any parent or other person legally responsible for the child who is the subject of reported child abuse or neglect, provided that such person is not under investigation for the reported child abuse or neglect; and

(H) The name of any member of the household of the child who is the subject of reported child abuse or neglect, provided that such person is not under investigation for the reported child abuse or neglect;.

(7) The State Personnel Board, by administrative subpoena, upon a finding by an administrative law judge appointed by the chief state administrative law judge pursuant to Article 2 of Chapter 13 of Title 50, that access to such records may be necessary for a determination of an issue involving departmental personnel and that issue involves the conduct of such personnel in child related employment activities, provided that only those parts of the record relevant to the child related employment activities shall be disclosed.

The name of any complainant or client shall not be identified or entered into the record;

~~(7.1)(8) A child advocacy center which is certified by the protocol committee, as such term is defined in Code Section 19-15-1, for the county where the principal office of the~~

~~center is located as participating in the Children's Advocacy Centers of Georgia or a similar accreditation organization and which is operated for the purpose of investigation of known or suspected child abuse and treatment of a child or a family which is the subject of a report of abuse, and which has been created and supported through one or more intracommunity compacts between such advocacy center and one or more police agencies, the office of the district attorney, a legally mandated public or private child protective agency, a mental health board, and a community health service board; provided, however, that any child advocacy center which is granted access to records concerning reports of child abuse shall be subject to the confidentiality provisions of subsection (b) of Code Section 49-5-40 and shall be subject to the penalties imposed by Code Section 49-5-44 for authorizing or permitting unauthorized access to or use of such records;~~

~~(8)(9)~~ Police or any other law enforcement agency of this state or any other state or any medical examiner or coroner investigating a report of known or suspected child abuse or any review committee or protocol committee created pursuant to Chapter 15 of Title 19, it being found by the General Assembly that the disclosure of such information is necessary in order for such entities to carry out their legal responsibilities to protect children from child abuse and neglect, which protective actions include bringing criminal actions for such child abuse or neglect, and that such disclosure is therefore permissible and encouraged under the 1992 amendments to Section 107(b)(4) of the Child Abuse Prevention and Treatment Act, 42 U.S.C. Section 5106(A)(b)(4); and

~~(9)(10)~~ The Governor, the Attorney General, the Lieutenant Governor, or the Speaker of the House of Representatives when such officer makes a written request to the commissioner of the department which specifies the name of the child for ~~which~~ whom such access is sought and which describes such officer's need to have access to such records in order to determine whether the laws of this state are being complied with to protect children from child abuse and neglect and whether such laws need to be changed to enhance such protection, for which purposes the General Assembly finds such disclosure is permissible and encouraged under the 1992 amendments to Section 107(b)(4) of the Child Abuse Prevention and Treatment Act, 42 U.S.C. Section 5106(A)(b)(4)."

"(f) Notwithstanding Code Section 49-5-40, a child who alleges that he or she was abused shall be permitted access to records concerning a report of child abuse allegedly committed against him or her which are in the custody of a child advocacy center, the department, or other state or local agency when he or she reaches 18 years of age; provided, however, that prior to such child reaching 18 years of age, if the requestor is not the subject of such ~~report~~ record, such ~~reports~~ records shall be made available to such child's parent or legal guardian

or a deceased child's duly appointed representative when the requestor or his or her attorney submits a sworn affidavit to the applicable child advocacy center, the department, or other state or local agency that attests that such information is relevant to a pending or proposed civil action relating to damages sustained by such child; and provided, further, that such ~~reports~~ record concerning a report of child abuse shall still be subject to confidentiality pursuant to paragraph (4) of subsection (a) of Code Section 50-18-72. Such record concerning a report of child abuse shall not be subject to release pursuant to subsection (g) of this Code section.

(g)(1) A subpoena, notice to produce, or other process seeking access to or disclosure of child abuse records or access to any individual who conducted the creation of, was present during the creation of, prepared, or assisted in preparing such records shall:

(A) Be served on all parties of record;

(B) Be served by certified mail or statutory overnight delivery, return receipt requested, upon the individual whose records are sought or, if known, such individual's counsel. If the individual whose records are sought is a child, service shall be made as provided in this subparagraph upon such child's parent, guardian, or legal custodian;

(C) Be served on the prosecuting attorney who has jurisdiction over a pending investigation or prosecution of criminal or unlawful activity, if such information is known to the individual seeking such access or disclosure; and

(D) Not imply that the record holder may voluntarily permit access to or disclosure of child abuse records or access to any individual who conducted the creation of, was present during the creation of, prepared, or assisted in preparing such records except pursuant to a court order as provided in paragraph (4) of this subsection.

(2) When child abuse records are the subject of a pending investigation or prosecution of criminal or unlawful activity, the person or agency served with a subpoena, notice to produce, or other process seeking access to or disclosure of child abuse records or access to any individual who conducted the creation of, was present during the creation of, prepared, or assisted in preparing such records shall notify the prosecuting attorney who has jurisdiction over such investigation or prosecution of such service.

(3) A prosecuting attorney may intervene in an action involving a subpoena, notice to produce, or other process seeking access to or disclosure of child abuse records or access to any individual who conducted the creation of, was present during the creation of, prepared, or assisted in preparing such records.

(4) Notwithstanding discovery permitted under Article 5 of Chapter 11 of Title 9 or access to information permitted under Article 4 of Chapter 18 of Title 50, other than the persons and entities authorized by this Code section to access child abuse records, a court shall not allow access to or disclosure of child abuse records or access to any individual

who conducted the creation of, was present during the creation of, prepared, or assisted in preparing such records unless the court makes a written finding that such access and disclosure may be necessary for a determination of an issue before such court; provided, however, that prior to issuing an order authorizing such access and disclosure, the court shall examine such records or the individual whose testimony is sought in camera and determine whether public disclosure of the information contained in such record or by such testimony is necessary for the resolution of an issue before such court and the record or testimony is otherwise admissible under the rules of evidence.

(5)(A) When a court issues an order pursuant to paragraph (4) of this subsection, the court shall issue a protective order to ensure the confidentiality of such records. Such protective order may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense and may include one or more of the following:

(i) That the records not be reproduced except as authorized by court order;

(ii) That the records be viewed or disclosed only on specified terms and conditions;

(iii) That the records be sealed and only opened by court order;

(iv) That the order be applicable to all parties, their counsel, and any agent or representative of a party;

(v) That anyone allowed access to such records be required to acknowledge in writing that he or she agrees to be bound by the protective order; or

(vi) That records released pursuant to such order be returned to the court upon completion of the matter that caused the production of such records.

(B) Failure to obey a protective order issued under this subsection may be punished as contempt by the court."

SECTION 4.

Said article is further amended by revising Code Section 49-5-46, relating to the liability of the department or agency, as follows:

"49-5-46.

The department, ~~an or any~~ agency, a child advocacy center, and employees of ~~either thereof~~ providing access to or disclosure of records or information as authorized by Code Section 49-5-41 shall have no civil ~~liability~~ or criminal ~~liability responsibility~~ therefor."

SECTION 5.

All laws and parts of laws in conflict with this Act are repealed.